

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TONY PENWELL,  
Plaintiff  
v.  
CHERYL STRANGE, *et al.*,  
Defendant

CASE NO. 3:21-cv-05722-RJB-JRC  
  
**ORDER DENYING MOTION TO  
APPOINT COUNSEL**

This matter is before the Court on referral from the district court and on plaintiff's motion for appointment of counsel. *See* Dkt. 64. Defendants oppose the motion. *See* Dkt. 66.

In December 2021, the Court granted plaintiff's initial motion for appointment of counsel (Dkt. 8) but indicated that the appointment of counsel was contingent on finding counsel willing to represent plaintiff *pro bono*. See Dkt. 23 at 1. The Court directed the Clerk's Office to locate counsel willing to represent plaintiff in this matter. Dkt. 23, at 4. Despite multiple efforts, however, the Clerk's Office was unable to locate volunteer *pro bono* counsel to represent plaintiff. The Court explained to plaintiff that he must proceed *pro se* unless he procures counsel

1 himself because the Court cannot compel counsel to represent plaintiff. *See* Dkt. 36 at 2 (citing  
 2 28 U.S.C. § 1915(e) (“The court may request an attorney to represent any person unable to afford  
 3 counsel.”)); *see also United States v. 30.64 Acres of Land, More or Less, Situated in Klickitat*  
 4 *Cty., State of Wash.*, 795 F.2d 796, 801 (9th Cir. 1986).

5 Plaintiff argues that the Court should attempt to appoint counsel again because “sufficient  
 6 time has elapse[d] since the original search,” he is now in Eastern Washington, and he is missing  
 7 legal books. Dkt. 64 at 1–2. The Court declines to do so for three reasons. First, plaintiff’s new  
 8 circumstances have no bearing on the appointment of counsel. *See Wilborn v. Escalderon*, 789  
 9 F.2d 1328, 1331 (9th Cir. 1986) (“A finding of exceptional circumstances requires an evaluation  
 10 of both ‘the likelihood of success on the merits [and] the ability of the petitioner to articulate his  
 11 claims *pro se* in light of the complexity of the legal issues involved.’”) (citing *Weygandt v.*  
 12 *Look*, 718 F.2d 952, 954 (9th Cir. 1983)). Second, the Court notes that plaintiff’s action has been  
 13 reduced to one claim for damages—instead of multiple claims seeking various forms of relief—  
 14 which makes plaintiff’s case less complex. *See* Dkt. 61. Third, plaintiff has shown he is capable  
 15 of litigating this matter by clearly expressing his thoughts regarding the case and communicating  
 16 his concerns to the court. Notably, plaintiff has filed numerous motions in this action with  
 17 varying success, such as a motion to strike (Dkt. 39), motion to stay (Dkt. 50), motion for  
 18 preliminary injunction (Dkt. 53), and a motion for leave to file a supplemental complaint (Dkt.  
 19 57).

20 Accordingly, plaintiff’s motion for appointment of counsel (Dkt. 64) is denied.

21 Dated this 12th day of October, 2022.

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24 J. Richard Creatura  
 Chief United States Magistrate Judge